No. 90-889

In the Supreme Court of the United States

OCTOBER TERM, 1990

WILLIAM "SKY" KING, PETITIONER

v.

ST. VINCENT'S HOSPITAL

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

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Respondent concedes that the operative statutory provision—38 U.S.C. 2024(d)—neither "state[s] the period of time for which an employee may obtain a leave of absence to attend training as a reservist or National Guard person," Br. 36, nor "expressly impose[s] number, frequency, or duration limitations." *Id.* at 31. As a result, respondent effectively concedes the textual weakness of its interpretation. Undaunted, respondent nonetheless insists that a durational limit must be read into the provision to "avoid unreasonable consequences." *Ibid.* We disagree. Applying Section 2024(d) as Congress wrote it does not make the statute unworkable or lead to a result that is irrational or contrary to Congress's intent. To the contrary, it faithfully implements Congress's intent.

1. a. Respondent focuses on the differences between reemployment rights provided under Section 2024(d) to Reservists performing "active duty for training" and the protections afforded to Reservists, and others, who serve tours of "active duty" that are comparable in length to the three-year tour petitioner served in the Active Guard Reserve (AGR) Program.[1] Respondent notes that Section 2024(d) guarantees a "leave of absence" (which means that the Reservist maintains his status as an employee) and the right to return to precisely the same job previously occupied (Br. 4), rather than the right to "reemployment" in the same or a similar job, which is available under Section 2024(a) and (b) to Reservists and others who complete a multi-year tour of active duty.[2] Persons returning from active duty are allowed 90 days to apply for reemployment under Section 2024(a) and (b), whereas, under Section 2024(d), Reservists

[1] Respondent erroneously states (Br. 9 n.13, 10 n.15) that Section 2024(d) is the reemployment rights provision that applies to Reservists serving "periods of active duty up to five years" under 10 U.S.C. 679(a). In fact, that Section is rarely invoked as authority to call a Reservist into active duty. In any event, a Reservist called under that Section would be covered under 38 U.S.C. 2024(b), not Section 2024(d) of the Veterans' Reemployment Rights Act. The longest tour of duty that currently falls within the scope of Section 2024(d) is the three-year tour of full-time duty required by the AGR Program in which petitioner was enrolled.

[2] Section 2024(a) and (b) provide that enlistees, Reservists, or others who voluntarily or involuntarily enter on active duty enjoy reemployment rights on the same terms as inductees. The reemployment rights of those inducted into the Armed Forces are governed by 38 U.S.C. 2021(a) and (b), which is reprinted at App., *infra*, 1a-3a. See also 38 U.S.C. 2024(c) (reemployment rights following initial active duty training as provided for inductees).

returning from active duty for training must report to their pre-service jobs "at the beginning of the next regularly scheduled working period" following their return to the place of employment after release from service. Respondent suggests that the requirements of Section 2024(d) are ill-suited to lengthy periods of absence; if Congress had intended Section 2024(d) to confer reemployment right for extended periods, respondent maintains, it would have set forth rights and responsibilities similar to those provided under Section 2024(a) and (b). Resp. Br. 11-16.

None of the features of Section 2024(d) noted by respondent are incompatible with its application to any of the tours of duty that fall within the scope of the provision. It is neither unheard of nor impossible for an employee to take a leave of absence lasting years. Nor is there any apparent obstacle to an individual travelling back to his previous place of employment at the end of a prolonged leave and reporting to his job the next day.[3]

The fact that Congress chose to grant persons serving multi-year tours of active duty a longer period to return to civilian employment does not produce any inconsistency. Congress could reasonably have concluded that a shorter period was appropriate because *most* Reservists required to serve active duty for

[3] Respondent notes, Br. 18 n.36, that, in enacting Section 2024(d) in 1960, Congress eliminated a provision in the prior law allowing trainees 30 days to report to work, explaining that "[a] period of 30 days within which to assert leave of absence rights by persons performing * * * training such as an armory drill of 2 hours is unrealistic." However, from the fact that Congress thought it unnecessary to allow an extensive interval to return to work from a training session that lasts only hours, it does not follow that a short interval is unworkable or unreasonable following a lengthy period of leave.

training are not away from their jobs for more than two weeks. As noted in our opening brief, at 30-31, Section 2024(d) was incorporated into the Veterans' Reemployment Rights Act (VRRA) at a time when the training obligations of Reservists were brief and intermittent. Even today, the great majority of Reservists invoking the protections of Section 2024(d) are away from their jobs for short, required training periods of one weekend per month and two weeks per year, Gov't Br. 31, and relatively few Reservists participate in the tours covered by Section 2024(d) that require more substantial time commitments. See Gov't Br. 23 n.18, 24-25 n.19. But even though Section 2024(d) may have been primarily intended to cover short training tours, and incorporates features geared to the typical case, that does not bar application of the provision to the broad range of cases covered by the statute's language. As this Court has recently stated, Congress is entitled to legislate for a class with particular examples in mind. See *Board of Governors* v. *Dimension Fin. Corp.*, 474 U.S. 361, 371 (1986). Although Section 2024(d) may be aimed at the most common training tours, it applies to the exceptional case as well.[4]

[4] In any event, the different periods provided for return to civilian employment may be justified on the basis of the nature of the duty itself. For example, Congress may have decided that a return to civilian life following most of the training encompassed by Section 2024(d) would tend to be less difficult than the return to ordinary life after three months of initial active training duty (which involves intensive training that includes preparation for combat) (see 38 U.S.C. 2024(c) (31 days to apply for reemployment)), or after several years of active duty in the Armed Forces (which could involve prolonged exposure to combat or other stressful conditions). Respondent seeks to second-guess these judgments by superimposing "reasonableness" limitations on Section 2024(d) that are not present in the statute.

Also in contrast with Section 2024(a)-(c), Section 2024(d) does not provide post-return job protection from discharge "without cause." See Resp. Br. 14. This difference could likewise be based on a congressional judgment that such protection was not needed for brief training tours. It does not follow from the decision not to provide this protection, however, that application of Section 2024(d) to longer training tours is inconsistent with the statutory language, or that it contravenes Congress's design. There is no compelling reason why this class of Reservists must be provided post-return job protection on the same terms as classes covered by other subsections, especially since Congress could justifiably have decided that other groups of employees needed more protection.

b. Respondent contrasts Section 2024(d)'s command—that an employee performing active duty for training be returned to his previous position—with the requirement in 38 U.S.C. 2021(a)(B), which applies under Section 2024(a) and (b) to those who serve active duty tours, that a returning employee be granted a position only if "still qualified" to perform his job. Br. 13. Respondent likewise observes that although Section 2021(a)(B) relieves the employer of the obligation to rehire the employee if circumstances "have so changed as to make it impossible or unreasonable" to comply, Section 2024(d) contains no such explicit qualification. See Resp. Br. 11 n.17. Respondent claims, Br. 13, that the failure to include these express provisos (which are addressed to eventualities likely to occur during long periods of absence) shows that Section 2024(d) was intended to apply only to leaves of short duration.

Respondent's contention is without force because the explicit limitations placed on the employer's obligations by Section 2021(a) do not differ significantly

from those implicit in Section 2024(d). This Court has recognized that the laws protecting veterans' reemployment rights are not designed to provide members of the Armed Forces with advantages over fellow workers, but rather to insure that those who serve their country will "not[] be penalized on [their] return by reason of [their] absence," and will be returned to "the precise point [they] would have occupied had [they] kept [their] position continuously" during the period of duty. *Fishgold* v. *Sullivan Drydock & Repair*, 328 U.S. 275, 284-285 (1946); see also *Siaskiewicz* v. *General Electric Co.*, 166 F.2d 463, 466 (2d Cir. 1948) ("Discrimination in favor of veterans is as foreign to the purposes of the [reemployment rights laws] as discrimination against them."); *Monroe* v. *Standard Oil Co.*, 452 U.S. 549, 561 (1981) (Reservists are entitled "to the same treatment afforded their co-workers not having * * * military obligations"). In accord with those principles, Section 2024(d) by its terms makes clear that it is *not* designed to make the Reservist better off than he would have been had he stayed on the job: by providing that a Reservist on training duty shall be returned to the status he "would have had" if he had "not been absent for such purposes," the provision makes clear that it does not mandate his "return" to a job that was eliminated during his absence. Compare 38 U.S.C. 2021(b)(2) (same language for inductees).

In this respect, the employer's duties under Section 2024(d) are virtually the same as under Section 2021(a)(B), since the exception for when "the employer's circumstances have so changed as to make it impossible or unreasonable" to comply with the latter provision, see Resp. Br. 29 n.69, is limited "only [to instances] where reinstatement would require

creation of a useless job or where there has been a reduction in the work force that would reasonably have included the veteran." *Davis* v. *Halifax Cty. Sch. Sys.*, 508 F. Supp. 966, 968 (E.D.N.C. 1981); see also *Cason* v. *Emanuel County Board of Educ.*, 101 L.R.R.M. 2045, 2046-2047 (S.D. Ga. 1979); *Jennings* v. *Illinois Office of Educ.*, 97 L.R.R.M. 3027, 3029-3030 (S.D. Ill. 1978), aff'd, 589 F.2d 935 (7th Cir.), cert. denied, 441 U.S. 967 (1979); *Schaller* v. *Board of Educ.*, 449 F. Supp. 30, 33 (N.D. Ohio 1978). See also *Davis* v. *Halifax Cty. Sch. Sys.*, 508 F. Supp. at 968 (the commands of Section 2021(a)(B) apply with full force even if all eligible positions are filled at the time of reappointment); *Kay* v. *General Cable Corp.*, 144 F.2d 653, 655 (3d Cir. 1944) (same); *Witter* v. *Pennsylvania National Guard*, 462 F. Supp. 299, 305 (E.D. Pa. 1978) (same). Like Section 2021(a)(B) (see also Section 2021(b)(2)), Section 2024(d) does not require an employer to create a useless job; nor does it mandate a Reservist's reinstatement to a position that would have been eliminated whether or not the Reservist had elected to take a leave of absence.[5]

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[5] The "changed circumstances" proviso in Section 2021(a)(B) cannot be compared with the amorphous, multi-factor "reasonableness" test that the courts have created under Section 2024(d). The former applies only in exceptional and well-defined situations, and its application is guided by the well-established principle that the employee is to be restored to a position as favorable (but no more favorable) than the one he would have occupied had he not left his job, even if such restoration requires great sacrifice by the employer. In contrast, the "reasonableness" tests that have been applied by the courts to leaves under Section 2024(d) involve a far-ranging assessment of the employer's convenience and inter-

Likewise, although Section 2024(d) does not address Reservists' rights to return to positions for which they are no longer qualified (other than as the result of a service-related disability), there is nothing in Section 2024(d) that requires employers to retain Reservists not capable of performing their jobs.[6] In sum, it is of no significance that Section 2024(d) does not contain language identical to that in Section 2021(a)(B) expressly "address[ing] the obligations the employer would owe an employee whose position has been abolished or redefined." Resp. Br. 13. Since Section 2024(d) implicitly fixes the

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ests as well as the Reservist's conduct and motives, and allow broad judicial discretion to balance the multiplicity of factors.

In addition, the Section 2021(a)(B) proviso, unlike the reasonableness test, is assessed as of the time the Reservist or veteran returns from duty, when the employer's "changed circumstances" can be known with specificity and certainty. Under Section 2024(d), the reasonableness of the leave is evaluated as of the time of the request, when the impact of the Reservist's leave on the employer is often no more than a matter of speculation.

[6] In this regard, Reservists completing active duty for training under Section 2024(d) enjoy the same degree of protection as Reservists returning from initial active duty training (Section 2024(c)) or active duty (Section 2024(b)). The latter provisions, in contrast with Section 2024(d), bar the discharge of employees "without cause" within six months or one year after reemployment following the completion of service. See Resp. Br. 14. In no case, however, would an employer be barred from discharging an unqualified employee under *any* of these provisions (since such a discharge would be "for cause"), as long as the discharge does not result from the imposition of unreasonable or arbitrary employment standards. See, *e.g.*, *William F. Congrove* v. *St. Louis-San Francisco R.R.*, 89 Lab. Cas. (CCH) ¶ 12,347, at 25,798-25,799 (W.D. Mo. 1980); *Taylor* v. *Southern Pacific Co.*, 308 F. Supp. 606, 609 (N.D. Cal. 1969).

employer's obligations and the Reservist's rights in such cases, the absence from Section 2024(d) of explicit language directed to those contingencies does not render Section 2024(d) incapable of application to prolonged tours of duty.

2. Respondent complains that the government's interpretation of Section 2024(d) "does not fall within [the] hierarchical scheme of protection afforded by the law." Br. 17. Respondent suggests that Congress placed Reservists serving active duty for training under Section 2024(d) "at the bottom of the employment rights scheme," Br. 16, and that it is therefore "impossible to believe that Congress intended to grant greater rights" to those involved in "active duty for training" than to "inductees, enlistees, and those called or ordered to duty." Br. 15-17, 36.

By purporting to discern within the VRRA a lexical ordering of categories of service and reemployment protections, respondent superimposes an artificial hierarchy without support in the statute. Respondent creates this ordering only by setting to one side the very clear *absence* of a durational limit in Section 2024(d), which it claims is out of keeping with the ordering it constructs.[7] Contrary to respondent's contentions, the VRRA scheme does not admit of a simple ranking of the varying protections afforded by its provisions. Rather, the features of the different VRRA provisions—including durational limits or the absence thereof—reflect an allocation of benefits and

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[7] The fact that a returning Reservist is entitled under Section 2024(d) to the *same* job he previously occupied, rather than, at the employer's election, to the same or a similar job as provided under Section 2021(a) and Section 2024(a)-(c)), also belies respondent's suggestion that Reservists that fall within the reach of Section 2024(d) are "at the bottom of the employment rights scheme."

burdens tailored to the needs and demands of different types of service. By seeking to circumscribe the rights clearly conferred under Section 2024(d) in order to conform with an artificial hierarchy, respondent disturbs the balance Congress has struck in each instance "between benefits to employee-reservists and costs to employers." *Monroe* v *Standard Oil Co.*, 452 U.S. 549, 565 (1981).[8]

3. a. Respondent's attempt (Resp. Br. 19-23) to undercut the government's reliance on the 1980 amendment to 38 U.S.C. 2024(f)—which provided that members of the National Guard performing full-time duty under 32 U.S.C. 502 would receive reemployment protection under Section 2024(d), see Gov't Br. 910 & n.11, 33-35—boils down to the contention that "full time duty under Section 502" does not include full time duty in the AGR Program. Respondent maintains, Br. 23, that the term "other duty" in 32 U.S.C. 502(f), see Gov't Br. App. 1a,

[8] More specifically, there is no foundation for respondent's assertion that interpreting Section 2024(d) to impose no fixed durational limit fails to fit in with the scheme of *durational* limits established under other sections. While Congress imposed durational limits under Section 2024(a)-(c), it did not impose durational limits in some other provisions of the VRRA. Congress may have decided there was no need to establish an explicit durational limit in Section 2021 for involuntary inductees (since it is unlikely personnel in that category would serve longer than necessary); in Section 2024(d) for active duty trainees (since training programs generally have inherent limits and a fixed duration, see Gov't Br. 37 n.27); and in Section 2024(e) for preinduction examinations (which are quite short). In contrast, many of the individuals covered under Section 2024(a) and (b) are volunteers who might choose to prolong their military service indefinitely. Congress may have decided to protect employers from the obligation to reemploy those members of the Armed Forces who were most likely to serve multiple tours of duty.

was "never intended * * * [to] encompass a three-year or longer extended tour of duty in the AGR program." In attempting to justify this contention, respondent bypasses the language of Section 502(f), which refers in unqualified terms to "training or other duty" and contains nothing that would prevent the inclusion of full-time AGR duty within the category of "other duty." Respondent also ignores the longstanding practice of the National Guard of the United States which, since 1980, has issued orders to serve in the AGR program under Section 502(f). See Gov't Br. 8, 33-35 n.25.

Respondent attempts to justify its thesis solely by reliance on a remark in the Senate Report, Br. 22 & n.53, that Section 502(f) was "not intended * * * to encourage any additional drill pay periods" or "any additional training with pay." See S. Rep. No. 1584, 88th Cong., 2d Sess. 2-3 (1964). Regardless of what the authors of that remark intended to "encourage," the comments do not bear the weight respondent places on them, which is, in effect, to invalidate 32 U.S.C. 502(f) as a source of authority for calling members of the National Guard to serve in the AGR Program, in contravention of longstanding practice and the plain terms of the provision.[9]

Even assuming, *arguendo*, that respondent's characterization of the scope of Section 502(f) was valid

[9] Respondent's attempt to invoke the principle of *ejusdem generis*, Br. 22 & n.51, to support its narrow view of the reach of Section 502(f) is also to no avail. Although other subsections of 32 U.S.C. 502 make reference to specific types of duty, those subsections are clearly not intended as an enumeration of the term "other duty" in Section 502(f), which was added to the statute after those subsections were enacted in order to provide authority for training activity not already covered by other parts of Section 502.

when Section 502(f) was enacted, respondent's description was no longer correct by the time Section 2024(f) was amended in 1980. In the first in a series of yearly enactments authorizing and appropriating funds for the AGR program, Congress specifically provided that members of the National Guard in the AGR program could be ordered to "serv[e] on active duty under * * * section 502(f) of title 32, United States Code." See Gov't Br. 34 n.25 (citing the Department of Defense Appropriation Act of 1980). National Guard members in the AGR have received their orders under that provision ever since. Thus, the phrase "other duty" in Section 502(f) unquestionably encompasses full-time duty in the Active Guard Reserve Program.

b. In the course of discussing the 1980 amendment to Section 2024(f), respondent at one point appears to argue (Br. 20-21) that Congress's decision in 1980 to define "training or other full time duty" authorized under 32 U.S.C. 502(f) as "active duty for training" within the meaning of Section 2024(d) may have effected an expansion of the *category* of personnel covered under Section 2024(d) to include National Guard members in the AGR program. However, respondent contends that the 1980 amendment in no way enlarged the *duration* of leave protected under that Section.

We do not disagree. Before the 1980 amendment to Section 2024(f), there was some question as to whether full time support personnel in the AGR program (who do not receive training) were covered by Section 2024(d), since it applies to "active duty for training." [10] The amendment to Section 2024(f)

[10] However, at the time Section 2024(d) was added in 1960, the definitional section of Title 38 stated that "active duty for training" included, "in the case of members of the Army National Guard or Air National Guard of any State, full-time duty under section * * * 502 * * * of title 32." 38 U.S.C. 101(22)(C). See Pub. L. No. 85-857, Sept. 2, 1958, 72 Stat. 1108. Thus, it appears that, prior to 1980, 38 U.S.C. 2024(d) applied to full-time personnel called under 32 U.S.C. 502, whether or not in training. In any event, Congress mandated that result through the 1980 amendment by specifying in the text of Section 2024(f) that "full-time duty performed by a member of the National Guard under section * * * 502 * * * is considered active duty for training for purposes of Section 2024(d)." 38 U.S.C. 2024(f).

made clear that the protections of Section 2024(d) applied to all personnel serving full-time under Section 502(f), including AGR personnel. However, the 1980 amendment in no way altered the meaning of Section 2024(d) as originally enacted with regard to the *duration* of coverage available under that Section. As it stood before Section 2024(f) was amended to cover AGR personnel, the plain terms of Section 2024(d) contained no durational limit and would have afforded comprehensive protection to any Reservist engaged in a bona fide tour of *training duty* for the full length of that tour. The 1980 amendment simply deemed AGR duty to be a form of "active duty for training" covered by Section 2024(d); it did not increase the length of leaves of absence protected under that Section.[11]

[11] Respondent errs in claiming (Br. 23-25) that the government relies on after-enacted legislative history in the form of an Explanatory Statement of Compromise Agreement, 128 Cong. Rec. 25,513 (1982), to support the position that Section 2024(d) imposes no arbitrary durational limit. Rather, the government adduced the Explanatory Statement in the course of noting that the government's position is identical to the position to which the Department of Labor has adhered since 1970, except for the two-year period when it followed the

Although it was not necessary for Congress to amend Section 2024(d) to increase the *duration* of its protections, Congress's decision to extend the coverage of Section 2024(d) to AGR personnel provides powerful support for the conclusion that Section 2024(d) does not, and never did, impose arbitrary time limits on the rights it provided. It would have made no sense for Congress to extend reemployment benefits under Section 2024(d) to Reservists serving tours known to require a three-year commitment if that Section only protects reemployment rights for shorter periods. Congress surely would not have taken the futile step of bringing a reserve program within the reach of a reemployment rights provision that offers the participants no reemployment protection.[12]

Respondent's interpretation of the statute, in contrast to our reading of the pertinent provision, leaves AGR support personnel—such as petitioner—with no reemployment rights. Petitioner is covered by Section 2024(d), not by any other reemployment rights provision, by virtue of the fact that he was called into service under 32 U.S.C. 502, and Section 2024(f) provides that service under 32 U.S.C. 502 constitutes active duty for training under Section 2024(d). For administrative reasons, the Army requires AGR personnel serving full-time tours of duty to serve for at least three years. Gov't Br. 8. Yet respondent contends that this Court should adopt a *per se* rule that a request for a three year leave of absence is unreasonable and hence unprotected under Section 2024(d). Congress did not intend that result. Thus, contrary to the court of appeals' invocation of *Church of the Holy Trinity* v. *United States*, 143 U.S. 457 (1892), Pet. App. 11a, a literal construction of the statute does not produce an absurd result. To the contrary, failing to protect AGR personnel like petitioner would undermine Congress's intent.

For the foregoing reasons, and those stated in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JUNE 1991

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decision in *Lee* v. *City of Pensacola*, 634 F.2d 886 (5th Cir. 1981). See Gov't Br. 32-33 n.24.

[12] For the same reason, even if Section 2024(d) as originally enacted did not guarantee reemployment following multi-year periods of active duty for training, the 1980 amendment to Section 2024(f) had the effect of extending the coverage of Section 2024(d) to AGR personnel for the full duration of their service. Gov't Br. 35. Section 2024(d) states that a leave shall be granted "for the period required to perform active duty for training." Since AGR personnel are required to serve for three years, it follows that the 1980 amendment to Section 2024(f), by extending the protections of Section 2024(d) to AGR personnel "for the period required" to complete their tours, could be construed to expand not only the scope but also the duration of protection for service in that program.

APPENDIX

§ 2021. Right to reemployment of inducted persons; benefits protected

(a) In the case of any person who is inducted into the Armed Forces of the United States under the Military Selective Service Act (or under any prior or subsequent corresponding law) for training and service and who leaves a position (other than a temporary position) in the employ of any employer in order to perform such training and service, and (1) receives a certificate described in section 9(a) of the Military Selective Service Act (relating to the satisfactory completion of military service), and (2) makes application for reemployment within ninety days after such person is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

(A) if such position was in the employ of the United States Government, its territories, or possessions, or political subdivisions thereof, or the District of Columbia, such person shall—

(i) if still qualified to perform the duties of such position, be restored to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position, by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of the employer, be offered employment and, if such person so requests, be employed in such other position the duties of which such person is qualified to perform

as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case;

(B) if such position was in the employ of a State, or political subdivision thereof, or a private employer, such person shall—

(i) if still qualified to perform the duties of such position, be restored by such employer or the employer's successor in interest to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of such employer or the employer's successor in interest, be offered employment and, if such person so requests, be employed by such employer or the employer's successor in interest in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case,

unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Nothing in this chapter shall excuse noncompliance with any statute or ordinance of a State or political subdivision thereof establishing greater or additional rights or protections than the rights and protections established pursuant to this chapter.

(b)(1) Any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section shall be considered as having been on furlough or leave of absence during such person's period of training and service in the Armed Forces, shall be so restored or reemployed without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration or reemployment.

(2) It is hereby declared to be the sense of the Congress that any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section should be so restored or reemployed in such manner as to give such person such status in the person's employment as the person would have enjoyed if such person had continued in such employment continuously from the time of such person's entering the Armed Forces until the time of such person's restoration to such employment, or reemployment.

(3) Any person who seeks or holds a position described in clause (A) or (B) of subsection (a) of this section shall not be denied hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces.

(c) The rights granted by subsections (a) and (b) of this section to persons who left the employ of a

State or political subdivision thereof and were inducted into the Armed Forces shall not diminish any rights such persons may have pursuant to any statute or ordinance of such State or political subdivision establishing greater or additional rights or protections.

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